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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

KRISTIN K. MAYES, Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP

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AZ CORP COMMISSION
DOCKET CONTROL

Arizona Corporation Commission

DOCKETED

AUG - 6 2009

DOCKETED BY

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In the matter of:

THOMAS ANTHONY LABRY, doing
business as IRON HORSE PETROLEUM,
INC., a suspended Oklahoma corporation,
and JANE DOE LABRY, husband and wife,

Respondent.

DOCKET NO. S-20691A-09-0365

**FIRST AMENDED NOTICE OF
OPPORTUNITY FOR HEARING
REGARDING PROPOSED ORDER TO
CEASE AND DESIST, ORDER FOR
RESTITUTION, ORDER FOR
ADMINISTRATIVE PENALTIES AND FOR
OTHER AFFIRMATIVE ACTION**

NOTICE: EACH RESPONDENT HAS 10 DAYS TO REQUEST A HEARING

EACH RESPONDENT HAS 30 DAYS TO FILE AN ANSWER

The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") alleges that respondent THOMAS ANTHONY LABRY, a married man doing business as IRON HORSE PETROLEUM, INC., a suspended Oklahoma corporation, has engaged in acts, practices, and transactions that constitute violations of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities Act").

I.

JURISDICTION

1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona Constitution and the Securities Act.

II.

RESPONDENTS

2. Respondent THOMAS ANTHONY LABRY ("LABRY") is a married man who at all times relevant resided in Newport Beach, California. At all times relevant, LABRY conducted

1 business in his individual capacity, and as IRON HORSE PETROLEUM, INC. LABRY has not
2 been registered as a securities salesman or dealer by the Division.

3 3. IRON HORSE PETROLEUM, INC. ("IRON HORSE PETROLEUM") is a
4 suspended Oklahoma corporation that at all times relevant maintained a principal place of business
5 in Newport Beach, California. According to the records of the Oklahoma Secretary of State and Tax
6 Commission, IRON HORSE PETROLEUM was formed as an Oklahoma corporation on May 17,
7 1993. At all times relevant, LABRY conducted business through IRON HORSE PETROLEUM as
8 its owner, president and statutory agent until its corporate status was suspended by the Oklahoma
9 Tax Commission on August 4, 2006 for non-payment of its franchise tax under 68 Okl. St. Ann. §
10 1212. IRON HORSE PETROLEUM has not been registered as a securities salesman or dealer by
11 the Division.

12 4. Respondent JANE DOE LABRY ("SPOUSE") was at all times relevant the spouse
13 of LABRY. SPOUSE is joined in this action under A.R.S. § 44-2031(C) solely for the purpose of
14 determining the liability of the marital community.

15 5. At all times relevant, LABRY was acting for his own benefit and for the benefit or in
16 furtherance of LABRY and SPOUSE's marital community.

17 6. LABRY and IRON HORSE PETROLEUM may be referred to as
18 "RESPONDENTS."

19 III.

20 FACTS

21 7. From on or about October 10, 2000, to September 17, 2008, RESPONDENTS
22 offered and sold unregistered securities within Arizona in the form of investment contracts and/or
23 fractional undivided interests in oil and gas.

24 8. On or about September 17, 2008, LABRY caused an unsolicited telephone message
25 to be left on the voice mail of an Arizona resident regarding a, "great investment opportunity" (the
26

1 "Solicitation"). Prior to the Solicitation, the potential Arizona investor was unaware of LABRY
2 and IRON HORSE PETROLEUM, and their business operations.

3 9. When the potential Arizona investor returned the Solicitation phone call as
4 instructed, he spoke to a man who represented that the investment pertained to working interests in
5 Oklahoma oil wells that provided "safe" returns of twenty to twenty-five percent per year. The
6 man offered and, in fact, sent to the potential Arizona investor at his home in Arizona solicitation
7 materials regarding oil investments.

8 10. These investment solicitation materials include: (a) a twelve-page, spiral bound,
9 glossy and color brochure titled, "IRON HORSE PETROLEUM" (the "Brochure"); (b) a seven-
10 page IRON HORSE PETROLEUM "Subscription Agreement" regarding investments in the
11 "Walters Field Priddy Sand Unit Development Program" (the "Subscription Agreement"); and (c) a
12 single-page, color document titled "Iron Horse Petroleum Cotton County, Oklahoma Monthly
13 Projections" (the "Monthly Unit Projections").

14 11. The Brochure includes detailed photographs of working oil wells, maps and
15 geographical diagrams, and states that IRON HORSE PETROLEUM, "is an independent energy
16 company engaged in the acquisition, development, exploration, production and marketing of
17 natural gas and crude oil."

18 12. The Brochure states that IRON HORSE PETROLEUM is seeking investors to assist
19 in the development of forty-one oil and support wells sited on the "Walters Field Priddy Sand
20 Unit" ("WFP") project in Cotton County, Oklahoma. The Brochure states that the WFP contains
21 1,800,000 barrels of proven oil reserves, and nine equipped oil wells producing 527 barrels of oil
22 per day.

23 13. The Brochure and Subscription Agreement state that IRON HORSE PETROLEUM
24 is offering 100 WFP Unit Investments costing \$25,000 each, for a total offering of \$2,500,000 (the
25 "WFP Unit Investment(s)").
26

1 14. The Monthly Unit Projections state that each WFP Unit Investment represents a .75
2 percent working interest in the entire WFP project. The Monthly Unit Projections further state that
3 if IRON HORSE PETROLEUM produces, for instance, 1,000 barrels of oil per day via the WFP
4 project, an investor would earn \$13,162 per WFP Unit Investment, per month.

5 15. The Brochure further states that the WFP Unit Investments provide investors with
6 tax benefits, including the fact that: (a) fifty to seventy-five percent of an investment can be
7 "written off" or deducted from a tax liability for "intangible" drilling costs during the first year of
8 the investment; (b) lease, drilling equipment and development costs can be deducted from taxable
9 income as cost depletion or depreciation over a period of five to seven years; and (c) a tax incentive
10 known as the "Small Producer's Exemption" or "Percentage Depletion Allowance" allows
11 approximately fifteen percent of an investor's net investment income to be "TAX FREE."

12 16. The WFP Unit Investment solicitation materials state that IRON HORSE
13 PETROLEUM manages all aspects of the investments, and will use investor money for the: (a)
14 procurement and management of land and oil equipment leases; (b) operation and maintenance of
15 nine existing and producing oil wells, one water supply well and eight water injection wells; (c)
16 repair and "rework" of eighteen existing oil wells for production; (d) construction of five new oil
17 wells at future drilling sites on the WFP; and (e) the storing, transportation, marketing and selling
18 of the WFP project oil to third parties. The Brochure emphasizes that the success of the WFP
19 project and related WFP Unit Investments will primarily depend on IRON HORSE
20 PETROLEUM's superior knowledge and understanding of oil exploration techniques and
21 strategies. The Brochure further states that a WFP Unit Investment is "NOT a partnership," with
22 IRON HORSE PETROLEUM.

23 17. The potential Arizona investor could have purchased WFP Unit Investments by
24 completing and signing the Subscription Agreement, and mailing the Subscription Agreement and
25 investment money to IRON HORSE PETROLEUM at a private post office box in Newport Beach,
26 California rented and controlled by LABRY.

1 18. The Brochure and Subscription Agreement disclose that the WFP Unit Investments
2 are not registered with or “approved” by the S.E.C. However, the WFP Unit Investment
3 solicitation materials discussed above fail to further disclose that both LABRY and IRON HORSE
4 PETROLEUM were respondents in previous securities enforcement proceedings filed against them
5 by four other state securities regulatory agencies for improperly offering and/or selling the
6 unregistered WFP Unit Investments while not being registered as securities salesman or dealers, or
7 exempt from registration. For instance:

8 A. On August 25, 2000, the Illinois Securities Department issued an “Order of
9 Prohibition” to IRON HORSE PETROLEUM for its offer and sale to at least two
10 Illinois residents WFP Unit Investments that were neither registered, nor exempt
11 from registration, in violation of the Illinois Securities Law of 1953 (*See*, Ill.
12 Administrative File No. 000059) (the “Illinois Enforcement Order”). The Illinois
13 Enforcement Order was entered after a hearing on the merits, and it: (1)
14 “permanently” prohibits IRON HORSE PETROLEUM from offering and selling
15 securities in Illinois; (2) notes that one investor purchased two separate, quarter
16 interest WFP Unit Investments in the fall of 1999 totaling \$12,500; and (3) that
17 these two investment purchases were acknowledged in a letter signed by LABRY as
18 president of IRON HORSE PETROLEUM.

19 B. On September 26, 2000, the Pennsylvania Securities Commission (“PSC”) issued a
20 “Summary Order to Cease and Desist” against LABRY and IRON HORSE
21 PETROLEUM for offering to at least one Pennsylvania resident securities in the
22 form of “fractionalized working interests in the Walters Field Priddy Sand Unit
23 Development Program (Units) to drill oil and gas wells in West Cotton County,
24 Oklahoma,” that were neither registered, nor exempt from registration, and while
25 not being registered as securities dealers or salesman in violation of the
26 Pennsylvania Securities Act (*See, In re Iron Horse Petroleum, Thomas Labry, et al.*,

1 Administrative Docket No. 0009-11) (the "Pennsylvania Enforcement Order"). The
2 Pennsylvania Enforcement Order further finds that LABRY and IRON HORSE
3 PETROLEUM violated the Pennsylvania Securities Act by filing a statement with
4 the PSC that falsely represented that they would employ only registered securities
5 sales agents to offer and sell the WFP Unit Investments.

6 C. On January 9, 2001, the Division of Securities of the Wisconsin Department of
7 Financial Institutions ("WSD") issued a "Petition for Order" against both LABRY
8 and IRON HORSE PETROLEUM for offering a Wisconsin resident securities in
9 the form of "certificates of interest or participation in oil, gas or mineral
10 lease...units in 'The Walter Field-Priddy Sand Unit Development Program,'" that
11 were neither registered, nor exempt from registration, and while not being registered
12 as securities salesman or dealers in violation of the Wisconsin Uniform Securities
13 Law. (*See, In re Iron Horse Petroleum, Inc., Thomas A. Labry, et al.*, File No. S-
14 00073(EX)). On January 9, 2001, the WSD issued Summary Orders of Prohibition
15 against both LABRY and IRON HORSE PETROLEUM preventing them from
16 further offering or selling the unregistered WFP Unit Investments while not
17 registered as securities salesman or dealers or exempt from registration (the
18 "Wisconsin Enforcement Orders").

19 D. On April 17, 2003, the Alabama Securities Commission issued a "Cease and Desist
20 Order" against LABRY and IRON HORSE PETROLEUM for their conduct in
21 offering and/or selling to Alabama residents securities in the form of "investment
22 contracts involving interests in the Walters Field Priddy Sand Unit Development
23 Program [sic] a gas and oil drilling program of IRON HORSE," that were neither
24 registered, nor exempt from registration, in violation of the Alabama Securities Act.
25 (*See, In re Labry, Iron Horse Petroleum, Inc., et al.*, Administrative Docket No.
26 CD-2003-0009) (the "Alabama Enforcement Order").

1 19. The WFP Unit Investment Brochure discloses that the investments “may involve a
2 high degree of risk.” However, the WFP Unit Investment solicitation materials discussed above do
3 not further disclose that LABRY and IRON HORSE PETROLEUM were defendants in a federal
4 civil fraud lawsuit filed by Colorado investors who purchased WFP Unit Investments from
5 LABRY and IRON HORSE PETROLEUM. (*See, Burba v. Thomas A. Labry and Iron Horse*
6 *Petroleum, Inc.*, 8:04-CV-01098-JVS-VBK (U.S. District Court, Central District of California)).

7 20. The Colorado WFP Unit Investment investors asserted claims against LABRY and
8 IRON HORSE PETROLEUM for, among other things, intentional fraud, conversion and a claim
9 under the Racketeer Influenced and Corrupt Organizations Act (18 U.S.C. § 1961, et seq.) for: (a)
10 misrepresenting that IRON HORSE PETROLEUM was an active Oklahoma corporation in good
11 standing and actively engaged and conducting oil business in California and Oklahoma; (b) failing
12 to disclose the existence of the securities enforcement orders discussed above; (c) misrepresenting
13 that IRON HORSE PETROLEUM was financially sound and adequately capitalized and
14 maintained adequate levels corporate control and due diligence; and (d) misrepresenting that IRON
15 HORSE PETROLEUM would use investor money solely for oil exploration and production
16 operations.

17 21. Although both LABRY and IRON HORSE PETROLEUM defended the federal
18 civil fraud lawsuit, on April 5, 2006, the Colorado investors obtained a final Order and Judgment
19 against both LABRY and IRON HORSE PETROLEUM on all of their claims totaling \$647,776.30
20 (the “Civil Fraud Judgment”). To date, no money has been collected by the Colorado WFP Unit
21 Investment investors on their Civil Fraud Judgment.

22 22. On October 4, 2000, LABRY and IRON HORSE PETROLEUM sold four WFP
23 Unit Investments to an Arizona resident totaling \$100,000 (the “Arizona Investments”). The
24 money to purchase the Arizona Investments derived from a personal injury settlement received by
25 the Arizona investor after becoming permanently disabled in an auto accident caused by a drunk
26 driver. The Arizona Investments were purchased by the Arizona investor after reviewing and

1 responding to the solicitation materials described above. The Arizona Investments are documented
2 in numerous letters and documents signed by LABRY. LABRY also acknowledged the Arizona
3 Investments during numerous telephone conversations with the Arizona investor's representative.
4 To date, the Arizona investor has received a return of only \$518.46 from the Arizona Investments.

5 23. Prior to their sale of the Arizona Investments, LABRY and IRON HORSE
6 PETROLEUM failed to disclose to the Arizona investor the existence of the Illinois and
7 Pennsylvania Enforcement Orders discussed above.

8 **IV.**

9 **VIOLATION OF A.R.S. § 44-1841**

10 **(Offer or Sale of Unregistered Securities)**

11 24. From on or about October 10, 2000, to September 17, 2008, RESPONDENTS
12 offered or sold securities in the form of investment contracts and/or fractional undivided interests in
13 oil and gas, within or from Arizona.

14 25. The securities referred to above were not registered pursuant to Articles 6 or 7 of the
15 Securities Act.

16 26. This conduct violates A.R.S. § 44-1841.

17 **V.**

18 **VIOLATION OF A.R.S. § 44-1842**

19 **(Transactions by Unregistered Dealers or Salesmen)**

20 27. RESPONDENTS offered or sold securities within or from Arizona while not
21 registered as a dealer or salesman pursuant to Article 9 of the Securities Act.

22 28. This conduct violates A.R.S. § 44-1842.

VI.

VIOLATION OF A.R.S. § 44-1991

(Fraud in Connection with the Offer or Sale of Securities)

29. In connection with the offer or sale of securities within or from Arizona, RESPONDENTS directly or indirectly: (i) employed a device, scheme, or artifice to defraud; (ii) made untrue statements of material fact or omitted to state material facts that were necessary in order to make the statements made not misleading in light of the circumstances under which they were made; or (iii) engaged in transactions, practices, or courses of business that operated or would operate as a fraud or deceit upon offerees and investors. RESPONDENTS' conduct includes, but is not limited to, the following:

A. Disclosing to the potential and actual Arizona investors that the WFP Unit Investments are not registered with, or approved by the S.E.C., but failing to further disclose the fact that both LABRY and IRON HORSE PETROLEUM are subject to the Illinois, Pennsylvania, Wisconsin and Alabama Enforcement Orders discussed above for their improper conduct in selling the unregistered WFP Unit Investments while not being registered as securities salesman or dealers or exempt from registration; and

B. Disclosing to the potential Arizona investor that the WFP Unit Investments involve risk, while further failing to disclose that both LABRY and IRON HORSE PETROLEUM were defendants in a federal civil fraud case filed against them for selling the WFP Unit Investments that resulted in an the unsatisfied Civil Fraud Judgment against them totaling \$647,776.30.

30. This conduct violates A.R.S. § 44-1991.

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VII.

REQUESTED RELIEF

The Division requests that the Commission grant the following relief:

1. Order RESPONDENTS to permanently cease and desist from violating the Securities Act pursuant to A.R.S. § 44-2032;
2. Order RESPONDENTS to take affirmative action to correct the conditions resulting from his acts, practices, or transactions, including a requirement to make restitution pursuant to A.R.S. § 44-2032;
3. Order RESPONDENTS to pay the state of Arizona administrative penalties of up to five thousand dollars (\$5,000) for each violation of the Securities Act, pursuant to A.R.S. § 44-2036;
4. Order that the marital community of LABRY and SPOUSE be subject to any order of restitution, rescission, administrative penalties, or other appropriate affirmative action pursuant to A.R.S. § 25-215; and
5. Order any other relief that the Commission deems appropriate.

VIII.

HEARING OPPORTUNITY

RESPONDENTS and SPOUSE may request a hearing pursuant to A.R.S. § 44-1972 and A.A.C. R14-4-306. **If RESPONDENTS or SPOUSE requests a hearing, the requesting respondent must also answer this Notice.** A request for hearing must be in writing and received by the Commission within 10 business days after service of this Notice of Opportunity for Hearing. The requesting respondent must deliver or mail the request to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007. Filing instructions may be obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at <http://www.azcc.gov/divisions/hearings/docket.asp>.

If a request for a hearing is timely made, the Commission shall schedule the hearing to begin 20 to 60 days from the receipt of the request unless otherwise provided by law, stipulated by the

1 parties, or ordered by the Commission. If a request for a hearing is not timely made the Commission
2 may, without a hearing, enter an order granting the relief requested by the Division in this Notice of
3 Opportunity for Hearing.

4 Persons with a disability may request a reasonable accommodation such as a sign language
5 interpreter, as well as request this document in an alternative format, by contacting Shaylin A.
6 Bernal, ADA Coordinator, voice phone number 602/542-3931, e-mail sabernal@azcc.gov.
7 Requests should be made as early as possible to allow time to arrange the accommodation.

8 IX.

9 ANSWER REQUIREMENT

10 Pursuant to A.A.C. R14-4-305, if RESPONDENTS or SPOUSE requests a hearing, the
11 requesting respondent must deliver or mail an Answer to this Notice of Opportunity for Hearing to
12 Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona
13 85007, within 30 calendar days after the date of service of this Notice. Filing instructions may be
14 obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site
15 at <http://www.azcc.gov/divisions/hearings/docket.asp>.

16 Additionally, the answering respondent must serve the Answer upon the Division.
17 Pursuant to A.A.C. R14-4-303, service upon the Division may be made by mailing or by hand-
18 delivering a copy of the Answer to the Division at 1300 West Washington, 3rd Floor, Phoenix,
19 Arizona, 85007, addressed to Mike Dailey.

20 The Answer shall contain an admission or denial of each allegation in this Notice and the
21 original signature of the answering respondent or respondent's attorney. A statement of a lack of
22 sufficient knowledge or information shall be considered a denial of an allegation. An allegation
23 not denied shall be considered admitted.

24 When the answering respondent intends in good faith to deny only a part or a qualification
25 of an allegation, the respondent shall specify that part or qualification of the allegation and shall
26 admit the remainder. Respondent waives any affirmative defense not raised in the Answer.

1 The officer presiding over the hearing may grant relief from the requirement to file an
2 Answer for good cause shown.

3 Dated this 6 day of August, 2009.

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6 Matthew J. Neubert
7 Director of Securities
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